IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 545 of 2001
(Old No. 2233 of 1981)

1. Kali Ram S/o Shiv Dutt
2. Bhupati Ram S/o Gaina Nand
3. Ram Bharosa S/o Bali
4. Kirti Ram S/o Shanker Dutt
5. Smt. Savitri W/o Shiv Dutt
6. Smt. Tara Devi W/o Kali Ram
7. Smt. Raju W/o Nathi Ram
8. Smt. Daveshwari W/o Ram Bharosa
9. Smt. Kamla W/o Nathi Ram
10. Smt. Sarojani W/o Sunder Lal

All R/o Village Ghar Patti Dagar
District Tehri Garhwal ..... Appellants

Vs

Chandar Mani S/o Hira Mani
R/o Village Ghar Patti Dagar
District Tehri Garhwal ..... Respondent

Sri Rajendra Dobhal, learned counsel for the appellants
Sri C.D. Bahuguna, learned counsel for the respondent

Hon'ble B.C. Kandpal, J.

This second appeal has been filed by the plaintiffs/appellants against the judgment and order dated 03.05.1980 passed by the District Judge, Tehri Gariwal in Civil Appeal No. 7 of 1979 thereby allowing the appeal of the defendant/respondent and setting aside the decree passed by the Munsif, Tehri Garhwal in Original Civil Suit No. 31 of 1979 vide judgment and decree dated 12.09.1979.

2. Heard learned counsel for the parties and perused the record.

3. Brief facts of the case are that the plaintiffs/appellants filed a suit against the defendant/respondent, which was registered as Original Suit

No. 31 of 1979. Munsif, Tehri Garhwal after assessing the evidence available on record allowed the suit with cost on the defendant/respondent.

4. Feeling aggrieved by the aforesaid judgment and decree the defendant/ respondent preferred an appeal before the appellate court, which was allowed by the appellate court and set aside the judgment of the trial court vide judgment and order dated 03.05.1980.

5. Thereafter, the plaintiffs/appellants preferred this second appeal before the Allahabad High Court which has been transferred to this Court for disposal.

6. Having considered the arguments advanced by the learned counsel for the parties, I am of the view that the findings recorded by the lower appellate court relates to the factual aspect of the matter. It is the well settled law that howsoever erroneous the finding of fact is there, the same cannot be interfered with in the second appeal.

7. I do not find any substantial question of law in this case as the factual aspects have been touched by the courts below and the finding has been recorded after the assessment of the evidence on record.

8. The appeal lacks merit and is liable to be dismissed.

9. Accordingly, the second appeal is dismissed.

05.09.2006 **(B.C. Kandpal, J.)**
ASWAL